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Lie Detectors as Corporate Tools

Companies view them as useful. But lawsuits by workers are now on the increase.

By RAYMOND BONNER

ON a cold day in January 1979, a polygraph machine was perched on a make-shift table in a tiny storage area. An examiner hired by her employer connected electrodes to Sandra Kwasniewski and then began his interrogation of the 28-year-old woman: Had she ever shoplifted anything? Who did she live with? Where did her boyfriend live? What were her dating practices? Did she drink?

Mrs. Kwasniewski, the manager of a combination gas station and convenience store in eastern Connecticut, contended that nothing had been stolen or even reported missing from the station. But two days after the polygraph test she was dismissed.

Tomorrow the trial begins in Norwich, Conn., in a lawsuit brought by Mrs. Kwasniewski and 21 others who were dismissed after taking or refusing to take the polygraph exam ordered by their employer, the Lehigh Oil Company. Among the allegations filed by David Fabricant, a lawyer from New London, Conn., are that the plaintiffs "suffered from emotional distress, acute personal embarrassment, loss of wages and earnings, and public humiliation and from mental and psychological trauma."

Mrs. Kwasniewski's experience was not an isolated one. No one, including industry groups, is willing to supply exact figures, but the New York Civil Liberties Union estimates that each year a half million job applicants and employees nationwide are required to take a polygraph test in situations that range from screening of job applicants to on-the-job testing to detect dishonest employees. The American Polygraph Association, a nonprofit organization of examiners based in Dearborn, Mich., says about 38 percent of the Fortune 500 companies use the polygraph.

Among the users are Gimbel's department stores, Duane Reade drug stores, both based in New York City, the Zale Corporation, a Dallas-based company with some 1,200 jewelry outlets around the country, and many banks, including Chase Manhattan and Chemical in New York City.

As cases concerning polygraphs work through the judicial system and the number of complaints increases, opponents of polygraph tests are asking legislatures to ban them. On the Federal level, Representative Stewart McKinney, Republican of Connecticut, is planning to introduce legislation that would prohibit private employers from using the tests.

Sixteen states, including New Jersey and Connecticut, already prohibit employers from using lie detectors, and 21 states require polygraph registrars to be licensed, according to the Legal Action Center, a nonprofit group in New York. In New York State, Attorney General Robert Abrams is strongly backing legislation that would prohibit their use here. Mr. Abrams supported similar legislation last year, which failed to pass, but Timothy Gilles, the attorney general's press secretary, said the matter had become more urgent because of a "dramatic increase in complaints. Mr. Gilles said that the number of complaints about polygraphs has doubled in the past six months—now, about four a week—rising to the most frequent category of complaints received by the Attorney General's Civil Rights Bureau, which also handles housing and employment discrimination matters.

The issues in the cases range from harassment to complaints of violation of state law. Until Mr. Kwasniewski, James Binetti was asked to take a polygraph test when he applied for a job. First he was asked to demonstrate his technical skills as a solderer—the job was with Janel Jewelry in New York City—and having successfully done so, he was later hooked up to a polygraph machine. He was asked if he had ever been arrested or used drugs. The company later told him he

had failed that exam. When he was not fired, he filed a complaint against Janel with the New York State Division of Human Rights.

Through his lawyer, Paul Samuels, director of the Legal Action Center in Manhattan, he charges that the question was asked violated the state's Human Rights Law. Janel declined to discuss the case.

MOST companies are "unwilling to talk about their use of polygraphs," said Lynn Marcy, president of the American Polygraph Association. He said the reluctance was because of the "adverse treatment" the subject has generally received in the press. He blamed such treatment on "unobjective and biased" reporters.

Lehigh Oil, Duane Reade and Gimbel's declined a reporter's request to discuss their use of the polygraph test. So did Alexander's, the large New York department store chain, which is the defendant in numerous complaints filed by the Legal Action Center on behalf of workers dismissed by Alexander's after having been given a polygraph.

The Zale Corporation was one company that did agree to discuss its use of lie detectors. Its vice president in charge of risk management and employee benefits, Harry Johnson, said that the company uses the test in three situations: to screen job applicants; as part of an investigation when property or money is missing, and for random checks of employees that are intended to deter theft.

How reliable are the tests? "That's a tough one," he said, adding that they are "a lot less reliable in pre-employment screening than in a specific theft situation."

In states where the tests are prohibited, Mr. Johnson says the company relies on other techniques, ranging from more thorough background checks for job applicants to the use of undercover agents to discover a dishonest employee.

A spokesman for the Chase Manhattan Bank, Kenneth Mills, said that pre-employment polygraph exams were given for "relatively lower level employees who operate in relatively unsupervised fashion and yet have access to substantial assets of the bank." He said that he could not provide data on the number of people who have not been hired because of the results of the polygraph exam.

The president of a jewelry manufacturing company, which administers

about 100 to 150 polygraph exams each year, agreed to talk about his company's policy but only on the condition that neither he nor his company be identified. While saying that the exams are "far from perfect," he added that there is "no question" that they have helped him reduce the risk of hiring a potential thief. He also administered the test periodically to those already employed. The random test "helps keep my employees honest," he said.

Joseph Buckley, president of John Reid & Associates, a Chicago company that is one of the oldest and most reputable polygraph concerns, said that by using a polygraph, an employer increases the chance of hiring an honest employee by about 25 percent.

Norma Rollins, director of the privacy project for the New York Civil Liberties Union, says the tests are "abusive to the employee and virtually useless to the employer." But civil libertarians—troubled by issues such as invasion of privacy—are not the only ones who want them banned.

David C. Raskin, a professor of psychology at the University of Utah who has studied polygraph usage for more than a decade, often with grants from the Department of Defense and Department of Justice, agrees that their use by private employers should be prohibited. It's all right to use the polygraph in a criminal investigation, Mr. Raskin says, because the focus is on a specific incident, the examiners are trained, and the subject has a constitutional right to refuse to take it.

"Everything we know suggests" that polygraph results obtained by private employers are not very reliable, Mr. Raskin said. He contends that at best they might be accurate 90 percent of the time. Accepting this figure, the New York Civil Liberties Union contends that 10 percent of the half million people tested each year—or 50,000 individuals—are being "unjustly" deprived of employment.

Among the criticisms, opponents of polygraph exams say that the examiners ask questions that employers are legally prohibited from asking. In New York, for example, employers may not ask about a person's mental health or whether he has ever been arrested, as opposed to convicted. But Mr. Samuels of the Legal Action Center and Miss Rollins of the Civil Liberties Union, said that these questions are asked routinely. Mr. Marcy responds that reputable polygraph examiners do not ask illegal questions.

Mr. Samuels also charges that the

tests are a means of discriminating against minorities. He said that the Legal Action Center has received "hundreds" of complaints from individuals required to take a polygraph exam, and that the "vast percentage" who are not hired or who are dismissed have been minorities.

Willie R. Miles, a 38-year-old black man from Brooklyn, worked for Zale for 14 years, rising to the position of supervisor of the checking and shipping department. He was recently dismissed after being told that he had failed three polygraph examinations during which he was asked if he had ever taken money from the company or committed other improper behavior on the job.

On behalf of Mr. Miles, the Legal Action Center has filed a complaint with the New York State Division of Human Rights, charging, among other things, that Mr. Miles was terminated "solely by reason of his race." According to the complaint, while Zale has dismissed many employees for having failed a lie detector test, only one has been a white. Mr. Johnson, the Zale vice president, said that "this color had nothing to do with" Mr. Miles being dismissed.

MR. SAMUELS says his group has filed several complaints with the New York Division of Human Rights. All are pending resolution, and Mr. Samuels said he would appeal any cases he loses to the courts.

A Lake Wales, Fla., attorney, Robin Gibson, recently won a \$250,000 settlement for a 38-year-old man who was fired by the Zayre Corporation, a discount department store chain, after taking a polygraph exam. The successful plaintiff, David G. Ivey, an assistant department store manager, was ordered to take the exam after \$500 was stolen from the safe in another of the company's stores, where Mr. Ivey had previously worked.

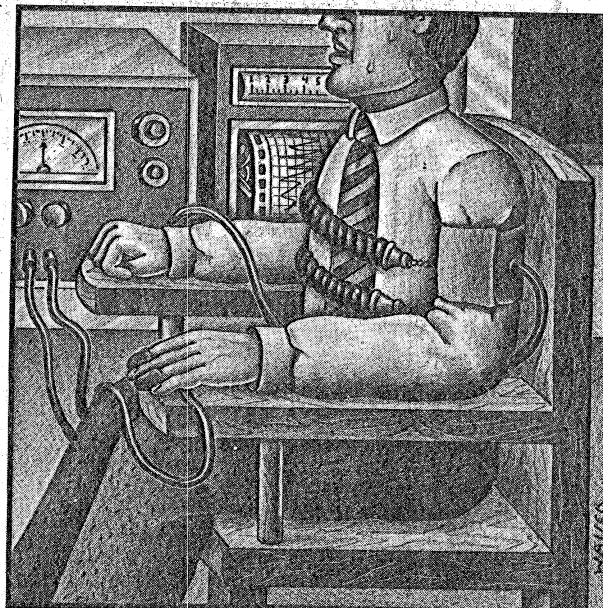
Mr. Gibson's client sued Zayre and the company that administered the test on grounds that they had been negligent and that they had committed libel when they communicated to other employees that Mr. Ivey had been fired. Mr. Gibson described what was told to other employees as "enough communication to employees to make it clear not to steal."

During the trial, Mr. Gibson introduced evidence that another employee was guilty of the theft for which Mr. Ivey had been fired. This employee had passed the polygraph test.

Mr. Gibson said he was aware of other six-figure judgments or settlements, including one in Michigan and one in Los Angeles.

Mr. Marcy, of the polygraph association, acknowledges that some private users abuse polygraph tests. His solution is government regulation. His organization is supporting Federal legislation that an association spokesman said will be cosponsored by Representatives Butler, Derrick, Democratic of South Carolina, and Gerald B. Solomon, Republican of Glen Falls, N.Y. This legislation would not ban the tests as Mr. McKinney's bill would, but would require that persons asked to take polygraph exams sign a written consent, be given a verbatim statement of questions before they are asked, and not be questioned about race, religion, political or labor views, sexual behavior or any event that occurred more than seven years earlier.

Calling lie detector examinations "inherently abusive," the New York Civil Liberties Union argues that this legislation is not sufficient to protect individual rights. Professor Raskin agrees. He says he has become "quite convinced" that the lie detector is an "effective technique in criminal investigations." But, he added, "when you move from that to screening applicants for jobs, that's a whole different ballgame."



Charles Walter

PINPOINTING WHAT IS TRUTH

The polygraph is based on the theory that lying triggers certain involuntary physiological responses—faster heartbeat, changes in blood pressure, increased respiration—that can be measured.

But these responses can occur, says David C. Raskin, a psychology professor at the University of Utah who has studied polygraph usage, even when a person is telling the truth. If he feels stress, fear or anger. And all of these emotions can be triggered by the room where the exam is conducted—hot, cold, cramped—or by the examiner's attitude. Many examiners, for example, seek to obtain admissions that would disqualify the subject for a job, according to Mr. Raskin.

Much of the criticism of lie detector usage by private employers stems from the examiners. Many examiners, critics charge, are not adequately trained in how to administer the sophisticated exam. Some states, in fact, now require that examiners be licensed, but the licensing requirements are not uniformly rigid.

Another of Mr. Raskin's concerns is the technique frequently used by employers. In a government investigation, he said, there are "control" questions. A typical one is: "Have you ever stolen

anything?" Few people can honestly answer no, Mr. Raskin noted. What about the pencils or paper, or the 25 cents you forgot to pay into the coffee fund?

For the criminal investigator, the control question is asked only to measure the response to the relevant question: "Did you steal the \$500?"

But some employers base their decision on the response to the control question. Critics say that if the subject lies and says "no," the employer says he failed the test. If he answers "yes," the employer can say he does not want to hire someone who has stolen.

Moreover, according to Mr. Raskin, "resentment" to the invasion of privacy, especially through the use of highly personal questions, can cause emotional reactions "indistinguishable from those associated with deception."

Sandra Kwasniewski, for example, who was dismissed from her job after taking a polygraph test, said that the examiner asked her: "Did you ever steal anything?" When she answered: "No," the examiner, according to Mrs. Kwasniewski, then countered: "Yes, you have! Everybody steals."

The test, she said, made her feel "so degraded and so abused."